United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

ORIGINAL 75-6132

75-6132

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

75-7646

75-7668, 75-6132, 75-6140

GEORGE RIOS, et al.,

Plaintiffs-Appellants,

-against-

ENTERPRISE ASSOCIATION STEAMFITTERS LOCAL 638 OF U.A., et al.,

Defendants-Appellees.

B

P/S

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff-Appellant,

-against-

ENTERPRISE ASSOCIATION STEAMFITTERS LOCAL 638 OF U.S., et al.,

Defendants-Appellees.

ON APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK WITH REGARD TO BACK PAY

BRIEF FOR DEFENDANT-APPELLEE JOINT STEAMFITTERS APPRENTICESHIP COMMITTEE OF THE STEAMFITTERS INDUSTRY

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, :

Plaintiff-Appellant, :

-against- :

ENTERPRISE ASSOCIATION STEAMFITTERS LOCAL 638 OF U.A., et al., :

Defendants-Appellees. :

- x Docket No. 75-6132

GEORGE RIOS, et al., :

Plaintiffs-Appellants, :

-against- :

ENTERPRISE ASSOCIATION STEAMFITTERS LOCAL 638 OF U.A., et al., :

Defendants-Appellees. :

- x

BRIEF FOR DEFENDANT-APPELLEE JOINT STEAMFITTERS APPRENTICESHIP COMMITTEE

ISSUE PRESENTED

Did the Court properly find The Joint Steamfitters Apprenticeship Committee not liable for any award of back pay?

STATEMENT OF THE CASE

A. The Nature Of The JAC And Its Training Program

Defendant-appellee The Joint Steamfitters Apprenticeship Committee of the Steamfitters' Industry ("JAC") is a joint labor-management committee which directly supervises the selection and training of apprentices in the steamfitting industry within the jurisdiction of defendant-appellant Enterprise Association Steamfitters Local 638 ("Local 638").

The JAC consists of eight members, four from management and four from Local 638 who are appointed by the Trustees of the Steamfitters' Industry Educational Fund. The Educational Fund was created by a 1960 Declaration of Trust pursuant to which four of its Trustees are appointed by Local 638 and four by defendant-appellee Mechanical Contractors Association of New York, Inc. ("MCA").

Neither the Trustees of the Educational Fund nor the Fund itself were made defendants in either of the present actions.

The JAC conducted a training program which at

the time of trial lasted five years. A part of the training was on the job work as a regular employee of an employer contractor. In addition, the JAC ran a program of classroom training at Delehanty Institute and at Voorhees Technical Institute totalling 720 hours. As the Court below found (360 F. Supp. at p. 986):

> "The apprenticeship program was designed and developed by the United Association and the Mechanical Contractors Association of America in consultation with the United States Department of Labor, Bureau of Apprenticeship and Training. The national program has been registered with the United States Department of Labor, and the local program has been registered with the New York State Department of Labor."

B. The Source Of JAC Funding

The sole source of funds for the Educational Fund, and accordingly for the JAC apprentice program, is payments made by the some 300 contractors who employ steamfitters pursuant to a collective bargaining agreement with Local 638. These payments to the Educational Fund are fixed by the collective bargaining agreements between these employeers and Local 638. At the time of trial, the collective bargaining agreement, the effective dates of which were October 2, 1972 through June 30, 1975, required

each employer to pay to the Educational Fund "five (5¢) cents per hour for each and every hour worked by journeymen and apprentice steamfitters . . ." (Rule XX, Exhibit 139A).

The present collective bargaining agreement, which runs through June 30, 1978 requires a payment of seven cents per hour to the Educational Fund for each hour worked. As a necessary consequence of the severe unemployment in the construction trades in the New York City area during the last year and presently, hours worked and accordingly contributions to the Educational Fund have greatly diminished.

C. The Findings Of The Court Below With Respect To The JAC

The sole basis for the finding by the Court below of discrimination on the part of the JAC was the competitive written aptitude examinations which the JAC used in the selection of apprentices from 1964 until 1971. There was no evidence, and no finding of fact that non-whites were ever refused an opportunity to take the test. Rather, the Court's finding of discrimination

relates solely to the tests themselves.

The Court specifically found that these examinations were selected initially with the advice of New York University and subsequently with Stevens Institute of Technology. The Court described the tests as follows (360 F. Supp at p. 987):

> "The written aptitude examination was in four parts: 1) Verbal meaning (the ability to understand ideas in words); 2) Numerical ability (the ability to work with numbers and handle simple quantitative problems); 3) Mechanical reasoning (the ability to understand and apply basic mechanical principles); and 4) Spatial relations (the ability to visualize objects in 3-dimensional space)."

These examinations were standard for their type and prepared by well established and professionally accepted test publishers (see Appendix to the opinion of the Court below, 360 F. Supp. at p. 996). Judge Frankel in denying preliminary relief to class action plaintiff Rutledge, representing the class of would-be apprentices, noted that while he had passed three of the four parts of the examination he had failed the mechanical comprehension portion and stated as to it (A-89):

> "The evident relevance of mechanical comprehension to the work in question, the

> buttressing of this point for plaintiffs, and the sponsorship of the examination all indicate that it is fairly and aptly designed for a legitimate purpose." (Emphasis Judge Frankel's)

At the trial, however, the stipulated evidence established and the Court found that "[t]he stipulated results of the written tests given to apprenticeship applicants since 1967 (but not including the tests given in 1973) indicate that they have a differential impact on non-whites when compared with the results for whites." (360 F. Supp. at p. 992).

The Court then proceeded to make the key finding upon which the liability of the JAC solely rests (360 F. Supp. at p. 992):

> "The Equal Employment Opportunity Commission Guidelines on Employee Selection Procedures ('EEOC Guidelines'), 29 C.F.R. § 1607, et seq., recognize three methods of validating the job relatedness of a given test: criterion-related validity, content validity, and construct validity. With respect to the tests given by Stevens Institute, while there was some evidence of construct validity, there was no evidence of their criterion-related validity nor that a criterion-related study had been completed or planned. Without such evidence, the tests used by JAC from 1964 to 1971 cannot be considered job related, notwithstanding the difficulty of devising a fair test or of testing it for validity." (footnote omitted).

The fact of the matter was (and as far as we know still is) that there were no tests validated for steamfitters as the EEOC required. Certainly the JAC did not have the means to undertake such a costly and doubtful enterprise. Consequently, the best the Court below could do was to approve for use by the JAC the General Aptitude Test Battery of the United States Training and Employment Service which, though not fully validated, had not then been proved to have a differential impact on non-whites (360 F. Supp. at pp. 992-93).

The JAC was directed in the Order and Judgment below to indenture during the year 1973 "a minimum of 400 apprentices, of whom 175 shall be non-white." This more than doubled the number of apprentices in the program. In addition, the Affirmative Action Program requires the annual indenturing of a minimum of 100 non-whites unless the Administrator otherwise determines.

The Court below also required that the maximum age for applicants to the JAC training program be increased from 24 to 30 with the result that any persons who had failed the admissions tests between 1967 and 1971 would have full opportunity to apply again for admission

under the Court imposed standards (360 F. Supp. at p. 993).

On the back pay issue with respect to the apprentice program, plaintiffs sought an award against all three defendants in favor of "unskilled persons who were denied admission to the apprenticeship program, or who, once admitted, dropped out, or who were deterred from applying to the apprenticeship program because of defendants' discriminatory policies and tests." (400 F. Supp. at p. 990-91).

The Court denied this portion of plaintiffs' claim, stating (400 F. Supp at p. 991):

> "Damages suffered as a result of the apprenticeship program are speculative, and equitable considerations weigh against making these back pay awards since the admission tests used by defendants were registered with the United States and New York State Departments of Labor and were adopted by defendants in good faith on the recommendation of experts."

With respect to the JAC, the Court went on to deny any back pay relief as against JAC stating (400 F. Supp at p. 992):

> "JAC. - JAC, a joint labor-management committee composed of four members chosen by MCA and four members chosen by Local 638, has conducted the steamfitters' apprenticeship program throughout the years relevant to the actions at bar. However, JAC has 'no' demonstrated responsibility for direct admissions to the A Branch of Local 638 of persons already qualified as journeymen steamfitters."

ARGUMENT

JAC WAS PROPERLY HELD NOT LIABLE FOR BACK PAY

A. The Award Of Back Pay And The Parties Liable Therefor Are Matters Properly Within The District Court's Discretion

The basis for awarding back pay in a Title VII action (42 U.S.C. § 2000e et seq.) is statutory.

> "If the court finds that the respondent has intentionally engaged in . . . an unlawful employment practice . . ., the court may enjoin the respondent . . ., and order such affirmative action as may be appropriate, which may include . . . reinstatement or hiring of employees, with or without back pay (payable by the [party] responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate." (42 U.S.C. § 2000e-5(g); emphasis added).

The principles to be used in applying the statute to any particular situation are equitable. Under Title VII, "Congress took care to arm the courts with full equitable powers . . . to 'secur[e] complete justice' . . . ." Albemarle Paper Co. v. Moody, 422 U.S. 405, 418 (1975). See also Franks v. Bowman Transportation Co., Inc., 44 U.S.L.W. 4356, 4360-61 (1976).

The standard to be used in awarding back pay as well as in reviewing that award, is as follows:

> ". . . given a finding of unlawful discrimination, back pay should be denied only for reasons which, if applied generally, would not frustrate the central statutory purposes of eradicating discrimination throughout the economy and making persons whole for injuries suffered through past discrimination. The courts of appeals must maintain a consistent and principled application of the back pay provision, consonant with the twin statutory objectives, while at the same time recognizing that the trial court will often have the keener appreciation of those facts and circumstances peculiar to particular cases.
>
> * * *
>
> ". . . the standard of review will be the familiar one of whether the District Court was 'clearly erroneous' in its factual findings and whether it 'abused' its traditional discretion to locate 'a just result' in light of the circumstances peculiar to the case, Langnes v. Green, 282 U.S. 531, 541 (1931)." Albemarle Paper Co. v. Moody, 422 U.S. 405, 421, 424-25 (1975).

Applying these principles, this Court, in its most recent Title VII decision, recognized the wide discretion granted to the district courts to fashion an appropriate remedy.

> "42 U.S.C. § 2000e-5(g) specifically gives authority to the district courts to order any 'affirmative action' which 'may be

> appropriate' to remedy past discrimination. Section 2000e-5(g) expressly states that the scope of the district courts' remedies for employment violations is to be 'equitable,' which is to say, broadly discretionary." EEOC v. Local 638 . . . Local 28, Sheet Metal Workers, et al., ___ F.2d ___, Slip Op. 2481, 2491 (2d Cir. March 8, 1976).

See also Patterson v. Newspaper & Mail Deliveries Union of N.Y. & Vic., 514 F.2d 767, 776 (2d Cir. 1975), petition for cert. filed, 44 U.S.L.W. 3069 (U.S. July 28, 1975) No. 155); Rios v. Enterprise Association Steamfitters Local 638, 501 F.2d 622, 629 (2d Cir. 1974); United States v. Wood, Wire and Metal Lathers International Union, Local 46, 471 F.2d 408, 413 (2d Cir.), cert. den. 412 U.S. 939 (1973).

Judge Bonsal, in awarding back pay, was fully cognizant of Albemarle Paper, supra, and in fact cited and relied upon that decision in reviewing the scope of his authority:

> "Thus, the statute grants wide discretion to award back pay when warranted by the circumstances of the case and a court must make such determinations on a case-by-case basis [cites omitted]. Cases which hold that an award of back pay is required by Title VII 'unless special circumstances would render such an award unjust' also require a case-by-case analysis [cites omitted].
>
> "In making awards for back pay, all the circumstances of the case, including ability to pay, must be taken into account [cites omitted]." 400 F. Supp. at p. 991.

On the basis of this standard, together with his knowledge of all of the relevant facts, Judge Bonsal specifically denied back pay to the class of unskilled would-be apprentices, and accordingly held that the JAC was not liable for back pay. The basis for his so finding was that (1) damages suffered as a result of the apprenticeship program are speculative, and (2) that the admissions tests, which were the sole point upon which JAC was held in violation, were not adopted with any intent to discriminate but rather "were adopted by defendants in good faith on the recommendation of experts." (400 F. Supp. at p. 991).

This Court held in Local 28, Sheet Metal Workers, supra at p. 2490, that Rule 52(a) F.R.C.P. applies in these cases so that "findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses."

Here, Judge Bonsal not only had the opportunity to observe this matter from his perspective as trial judge, but in addition he had closely supervised and lived with the Affirmative Action Program for almost three years

after the trial before he rendered his back pay decision and award. Under such circumstances, we submit that his refusal to make such an award against the JAC should be accorded great weight.

The Fifth Circuit has recognized that "apportionment of the responsibility for equitable relief in a [Title VII] case such as this one falls within the sound discretion of the district court," which has "wide latitude . . . to contour the remedy to the equities of the case," Guerra v. Manchester Terminal Corp., 498 F.2d 641, 655 (5th Cir. 1974) (one union rather than employer and international union held liable); and that "distribution of the back pay award" is to be made by the District Court in accordance with "principles of equity." Johnson v. Goodyear Tire & Rubber Co., 491 F.2d 1364, 1382 (5th Cir. 1974) (employer rather than union primarily liable). See also United States v. United States Steel Corporation, 371 F. Supp. 1045, 1060 (N.D. Ala. 1973); aff'd as modified, 520 F.2d 1043, 1060 (5th Cir. 1975), where the District Court held (and was specifically affirmed on appeal) the employer and local union liable for back pay, but not the international union because "[t]he international union was not really responsible for the practices giving rise to the three back-pay awards." (Footnote 39, 371 F. Supp. at p. 1060).

Reasoning from this Court's decisions in Local 28, Sheet Metal Workers, supra, and the Fifth Circuit cases, this Court should affirm Judge Bonsal's decision insofar as it denies plaintiffs any recovery of back pay against the JAC.

Inasmuch as a District Court has wide discretion in both determining and apportioning liability among defendants in a Title VII action, Judge Bonsal's ruling in refusing to impose back pay liability on the JAC is entitled to great weight.

B. Damages, If Any, Suffered As A Result Of The Apprenticeship Program Are Too Speculative

Clearly, an award of back pay to those who were deterred from applying to the JAC because of its alleged reputation is precluded by this Court's recent decision in EEOC v. Local 638 . . . Local 28, Sheet Metal Workers, supra, in which this Court, presented with a similar contention, held that back pay could not be awarded to those who never actually applied to the union or the apprenticeship program because such an award would be "too speculative for adjudication." (Id., at p. 2503). See also United States v. St. Louis-S.F.R. Co., 464 F.2d 301, 309-11 (8th Cir. 1972), cert. den. 409 U.S. 1107, cert. den., 409 U.S. 1116 (1973), where no back pay was awarded even though all defendants were found to have violated Title VII.

Similarly, an award of back pay to those who were denied admission to the JAC and to those who, once admitted, dropped out would be too speculative for adjudication. Thus, for example, it is wholly impossible to determine which, if any, individuals would have been sufficiently successful in meeting validated entrance requirements to be selected into the program. In addition, there is no assurance that the program would have been successfully completed by the apprentice. Further, apprenticeship does not automatically result in employment.

There is a clear distinction between an award of back pay to trained and qualified journeymen steamfitters and such an award to unskilled persons who failed an aptitude test. As the Court below stated (400 F. Supp. at p. 992):

> "Back pay is compensation for 'tangible economic loss' to be paid by parties responsible for that loss (see, e.g., Johnson v. Goodyear Tire & Rubber Co., supra at 1381-82; Robinson v. Lorillard Corp., 444 F.2d 791 (4th Cir. 1971); 42 U.S.C. § 2000e-5(g))."

Whether such unskilled persons suffered a tangible economic loss could never be other than wholly speculative. Under such circumstances, it is obvious that the District Court did not abuse its discretion in denying back pay

to those arguably affected by the apprenticeship program. United States v. Georgia Power Co., 474 F.2d 906 (5th Cir. 1973).

C. The Court Below Did Not Find That The JAC Intentionally Discriminated, But Rather Acted In Good Faith

The statutory condition precedent to an award of relief, including back pay, is a finding by the Court "that the respondent has intentionally engaged in . . . an unlawful employment practice . . . ." (emphasis added; § 2000e-5(g)).

In denying back pay to persons who were denied admission to the apprenticeship program, the District Court also looked to the equitable considerations involved in any award of back pay, and based its denial in part upon the JAC's good faith adoption and utilization of written admissions tests without intention to discriminate.

In the instant case the JAC was not found to have intentionally discriminated. On the contrary, it used a program that was:

> "designed in consultation with the United Association and the Mechanical Contractors Association of America and is registered with the United States Department of Labor." Opinion, 360 F. Supp. at p. 991.

The District Court, however, while noting "the difficulty of devising a fair test or of testing it for validity," 360 F. Supp. at 992 (citations omitted), held that defendants had not sufficiently established the "job relatedness" of the tests. In so holding, the District Court did indicate that:

> "defendants produced testimony at trial that the tests were widely used and professionally designed; that they were administered by Stevens Institute of Technology, a reputable testing institution; and that they were reasonably related to measuring the aptitudes they were designed to measure in the following four areas: verbal meaning, numerical ability, mechanical reasoning, and spatial relations." Opinion, 360 F. Supp. at 992.

There was also some evidence of construct validity for the tests given by Stevens Institute. Opinion, 360 F. Supp. at 992.

The current test is part of the General Aptitude Test Battery ("GATB") of the United States Training and Employment Service and is denominated "S-61R". A validation study was done on this test in 1954, and there is no evidence that the test discriminated against non-whites. Opinion, 360 F. Supp. at 992-993. As the District Court further stated:

> "It appears that in other contexts courts have approved use of the GATB. See, e.g., United States v. Local 86, Ironworkers, D.C., 315 F. Supp. 1202, 1246 (1970), aff'd, 443 F.2d 544 (9th Cir.), cert. denied, 404 U.S. 984, 92 S.Ct. 447, 30 L.Ed.2d 367 (1971). In view of the lack of evidence that S-61R has a differential impact on nonwhites and since JAC does not intend to disqualify apprenticeship applicants solely on the basis of their test results, the Court will permit the use of S-61R pending a further recommendation from the Administrator to be appointed hereunder." Opinion, 360 F. Supp. at 993.

As to other qualifications for admission, the JAC used age requirements not by themselves discriminatory, educational requirements upheld in a similar case and not enjoined here, a nondiscriminatory job-related physical requirement and an oral interview which was not enjoined (Opinion, 360 F. Supp. at 993-994).

There was no evidence that JAC graded or administered tests or any other aspect of selection into the program or operated the program itself in a discriminatory fashion.

Thus, the District Court correctly found that the JAC acted in good faith without intent to discriminate, relying upon its compliance with the apprenticeship requirements established by the Federal and State Departments of Labor. 400 F. Supp. at 991.

It cannot be disputed that the District Court properly weighed the JAC's good faith lack of intent to discriminate in exercising its discretionary right to deny back pay to those affected by the apprenticeship program. This factor, combined with the speculative nature of damages arguably suffered as a result of the apprenticeship program, demonstrate that under the "facts and circumstances peculiar to [this] case," Albemarle, supra, 422 U.S. at 422, the District Court properly exercised its discretion in finding the JAC not liable for back pay.

D. An Award Of Back Pay Against The JAC Would Preclude The Implementation Of The Affirmative Action Plan

While the District Court did not base its denial of back pay as to the JAC upon a finding that such an aware, if made, would preclude the continuation of the Affirmative Action Plan, we respectfully submit that this factor, in conjunction with those discussed supra at pages 4 to 8, compel this Court to uphold the District Court's ruling that the JAC is not liable for back pay.

The JAC is a joint labor-management committee appointed by the trustees of the Steamfitters Industry Educational Fund created pursuant to a 1960 Declaration of Trust. 360 F.Supp at 985. The Apprenticeship Program which JAC administers must be paid for out of the limited funds generated from employer contributions pursuant to a fixed formula in the collective bargaining agreements. The Educational Fund has no other source of funds.

Judge Bonsal directed a class of 400 apprentices, including 175 non-whites in 1973, more than doubling the total number of apprentices. The Affirmative Action Prorgam requires the annual indenturing of a minimum of 100 non-whites unless the Administrator otherwise determines. The indenture and training of this large a number of apprentices is obviously expensive. All of JAC's limited funds should be devoted to this purpose. Any award of back pay against JAC can only adversely affect JAC's ability to properly train apprentices and would therefore defeat the purpose of these actions and of the Decree. Non-whites as well as whites should not be deprived of a meaningful training program.

Under these circumstances, holding the JAC liable for back pay would effectively preclude its ability to operate the Affirmative Action Program. We submit, therefore, that this is a circumstance which the Supreme Court was referring to when it stated that:

> "It follows that, given a finding of unlawful discrimination, back pay should be denied only for reasons which, if applied generally, would not frustrate the central statutory purposes of eradicating discrimination throughout the economy and making persons whole for injuries suffered through past discrimination." (Albemarle Paper Co. v. Moody, supra, at 421; footnote omitted).

Authorizing the payment of back pay by the JAC would be to compensate would-be apprentices at the expense of present and future apprentices, including non-white apprentices, and, as Chief Justice Burger stated, would constitute "judicial approval of 'robbing Peter to pay Paul.'" (Concurring in Franks v. Bowman Transportation Co., supra, at 4366).

In Title VII cases, District Courts in this Circuit and elsewhere have applied this "frustration of purpose" concept in apportioning costs between the Government as plaintiff and a defendant local union because the local union had incurred and would continue to incur substantial

financial burdens in complying with the affirmative relief awarded (United States v. Wood, Wire and Metal Lathers International Union, Local 46, 328 F. Supp. 429, 442 (S.D.N.Y. 1973)), and in denying attorneys' fees where plaintiffs sued a discriminatory retirement plan because such award would not penalize the wrongdoers, but would penalize the plan's current participants. (Chastang v. Flynn and Emrich Company, 381 F. Supp. 1348, 1351 (D. Md. 1974)).

The imposition of potentially staggering back pay awards on the already financially strapped JAC could not help but adversely affect JAC's ability to provide proper training for apprentices, including members of the very classes on whose behalf these awards are ostensibly sought. It follows that where such awards would adversely affect such class members, they should not be made against the JAC. Albemarle, supra.

CONCLUSION

For the foregoing reasons, the denial of any award of back pay against the JAC should be affirmed.

Respectfully submitted,

BREED, ABBOTT & MORGAN and
DELSON & GORDON
Attorneys for Defendant-Appellee
The Joint Steamfitters
Apprenticeship Committee

NITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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GEORGE RIOS, et al.,

Plaintiffs-Appellants

-against-

ENTERPRISE ASSOCIATION STEAMFITTERS LOCAL 638 OF U. S., et al.,

Defendants-Appellees

etc.

AFFIDAVIT OF SERVICE BY MAIL

- -x

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

EDNA G. WATROUS, being duly sworn, says: I am employed in the office of Breed, Abbott & Morgan, 1 Chase Manhattan Plaza, New York, New York 10005, attorneys for deft. appellee Mechanical Contractors, in the above action.

On April 2 1976 I served the annexed
BRIEF FOR DEFENDANT-APPELLEE

by depositing a true copy thereof in a sealed, postpaid envelope at the post office box maintained at 1 Chase Manhattan Plaza, New York, N. Y. 10005, addressed to the following: Delson & Gordon, Esqs., 230 Park Avenue, New York, N. Y.

Sworn to before me this
5th day of April, 19 76

Donald L. Price

DONALD L. PRICE
NOTARY PUBLIC, State of New York
No. 24-8439300
Qualified in Kings County
Certificate Filed in New York County
Commission Expires March 30, 1978

Edna G. Watrous

Edna G. Watrous

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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GEORGE RIOS, et al.,

Plaintiffs-Appellants,

-against-

ENTERPRISE ASSOCIATION STEAMFITTERS LOCAL 638 OF U. A., et al.,

Defendants-Appellees

- -x

AFFIDAVIT OF SERVICE ON PERSON IN CHARGE

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

MORRIS ARNSTEIN, being duly sworn, says: I am employed in the office of Breed, Abbott & Morgan, 1 Chase Manhattan Plaza, New York, N.Y. 10005, attorneys for the Mechanical Contractors Association in the above action.

On the 2nd day of April, , 1976, between the hours of 9:30 A.M. and 5:30 P.M., I served the annexed

BRIEFS OF APPELLEES

on the attorney(s) listed below by delivering the same to and leaving the same with the person in charge of said office(s).

Tufo, Johnston & Allegaert, Esqs., 645 Madison Avenue, New York, N. Y. 10022

Sworn to before me this
2nd day of April 1976

Morris Arnstein

Morris Arnstein

Donald L. Price

DONALD L. PRICE
NOTARY PUBLIC, State of New York
No. 24-8439300
Qualified in Kings County
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UNITED STATES COURT OF APPEALS
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GEORGE RIOS, et al.,

Plaintiffs-Appellants,

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etc.

- -x

AFFIDAVIT OF SERVICE ON PERSON IN CHARGE

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ELIZABETH M. FINLEY, being duly sworn, says: I am employed in the office of Breed, Abbott & Morgan, 1 Chase Manhattan Plaza, New York, N.Y. 10005, attorneys for the defendant-appellee Mechanical Contractors in the above action.

On the 2nd day of April, 1976, between the hours of 9:30 A.M. and 5:30 P.M., I served the annexed

BRIEFS OF APPELLEES

on the attorney(s) listed below by delivering the same to and leaving the same with the person in charge of said office(s).

Steven J. Glassman, Esq., U. S. Attorney, St. Andrews Place, New York, N. Y.

Sworn to before me this
2nd day of April, 1976

Donald L. Price

DONALD L. PRICE
NOTARY PUBLIC, State of New York
No. 24-0459300
Qualified in Kings County
Certificate Filed in New York County
Commission Expires March 30, 1978

Elizabeth M. Finley

Elizabeth M. Finley